

457

T H E C A S E O F

*Thomas and
William Miles* } Respondents.

To the Appeal of } Appellant from a Decree of Dismissi-
William Peirson Esq; } on of the Court of Exchequer.

*Easter Term
x^o Willⁱ III.
Regis.*

THE Appellant Exhibited his Bill in the Exchequer, thereby setting up and praying Relief in five distinct Demands ; one whereof was to have suit to the Mills in Question, decreed and established, which he claimed from all Tenants and Inhabitants of *Stokesley* in the County of *York*, and thereby sets up for an immemorial Right to have their Suit to a certain ancient Mill erected and standing at the west end of the said Town, but shews that about sixty Years ago, the Mills in question were newly erected at the East end of the Town, far distant from the former Situation.

And insists upon some pretended Promise and Agreement of the then Tenants and Inhabitants, that in Case the then Owner of the former Mill would remove it from its first Situation, which dammed up the Water, and occasioned their Houses to be overflowed, to the East end, where the new Mills now stand, they would do such Suit to the New, as they ought to the former Mill.

The Defendants put in their Answer, and thereby denied that the Tenants and Inhabitants did owe Suit to the former Mill whilst standing, or that there was any such Agreement for the demolishing the former, and doing Suit to the new Erected Mills, and made their defences to the Appellants other Demands.

Issue being joyned upon all Matters in variance, the Defendants were necessitated to examine Witnesses to the whole, to their great Charge.

*After Trinity
Term, 1702.*

The Cause was heard before the Lord chief Baron, and other Barons, at *Sergeants-Inn*, and then the Appellant waved all Matters save the Suit of Mill and his Claim that the Tenants and Inhabitants should Bake every thing spent baked within *Stokesley* at his Bakehouse there ; and on a full Hearing, and great Deliberation, the Bill was dismissed as to the whole :

Ist. Because it appeared on the Appellants own shewing, that the Suit to the former Mill, if admitted due by Prescription (which yet was not sufficiently proved) was by the demolishing of it, and new Erection at a great Distance intirely destroyed.

II^{ly}. That there was no Proof that any Agreement was made, touching the demolishing of the Former, and new erection of the present Mills, much less any time when, or between whom, or on what Terms such Agreement was made, so as it might appear Reciprocal, and the Defendants bound by it, and a Court of Equity ought not to execute and establish an Agreement not produced nor ascertained, nor sufficiently proved ever to have been made.

III^{ly}. That there appeared no reason to presume that any such Agreement was ever made, since at and about the time which the Appellant Aimed, to Assign the new Erection of the present Mills, and ever since the Tenants and Inhabitants Ground from them at pleasure, at several adjacent Mills ; and Erected, and Used private ones in the Town, and that the Carriers or Loaders of the adjacent Mills, came twice, or thrice, or oftener Weekly, in the Day time, to fetch the Grist from the Tenants and Inhabitants without Contradiction.

And in case any such Agreement had been made, the Owners of the New Mills would in all probability have questioned the withdrawing the Suit, and got such Agreement established by some Decree, especially since such occasion was given near the time it was supposed to be made, and for so long time together.

IV^{ly}. That there should be such Suit due to the former Mill, is very improbable, for *Stokesley* is a great Market Town, consisting of many Families and Inhabitants, and whereto there is a great resort, and the Appellant himself alledgeth that there was but one old Mill, and it cannot be reasonably imagined that all the Tenants and Inhabitants were immemorially bound to do Suit at that Mill, which could not serve a fourth part of them.

V^{ly}. The consideration alledged to found the pretended Agreement upon, is as imaginary, since it is fully in Proof that the Town is still liable to Inundation as before, and that the Removal of the former Mill was for the Owners conveniency, the former Situation being more exposed to the Impetuosity of the River, then the new one, requiring also more Timber and Materials, and more frequent and expensive Repairs.

The Respondents therefore humbly insist, that the Court of Exchequer proceeded on good Grounds, in decreeing the Bill to be dismissed, and hope the same shall be confirmed.

WILL. COWPER,
JO. CHESHYRE.